FILE COPY

FILED
JUN 12 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ~~1378~~ 118

OCALA STAR-BANNER COMPANY, ET AL.,

PETITIONERS,

vs.

LEONARD DAMRON,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

Granted May 4, 1970

BRIEF OF PETITIONERS

HAROLD B. WAHL
Loftin and Wahl
414 Florida Title Bldg.,
Jacksonville, Florida 32202
Attorneys for Petitioners.

June, 1970.

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	3
LIBEL COMPLAINED OF	5
RESPONDENT ALLEGED PUBLIC FIGURE DAMAGE	6
DIRECTED VERDICT AT TRIAL UPHELD	8
SUMMARY OF ARGUMENT	9
ARGUMENT:	
1. Evidence at Trial Shows Public Interest	11
2. Lower Court Ruling Is Flat Repudiation of this Court	14
3. Respondent's Argument Not Tenable	16
4. Federal Constitutional Law of Libel	19
5. Respondent Has Made His Own Bed	21
6. Florida Court Incorrectly Construed Federal Law	22
7. Judgment Should Be Ordered for Petitioners	26
CONCLUSION	32

CITATIONS

CASES: *Page*

All Diet Foods v. Time (1968) 290 N.Y.Supp.2d. 445 21

Associated Press v. Walker (1967) 338 U.S. 130 .. 17, 18, 20, 25

Banks v. California (1969) 395 U.S. 708 2

Beckley v. Hanks (1967) 389 U.S. 81 .... 19, 26, 27, 28, 29, 32

Bon Air v. Time (S.D. Ga. 1969) 295 F.Supp. 704, affd. C.A. 5 - 5-6-70, ... F.2d. 21

Curtis v. Butts (1967) 388 U.S. 130 ..... 17, 18, 19, 20

Evans v. Abney (1970) ..... U.S. 24 L.Ed.2d. 634 31

Farnsworth v. Tribune (Ill. 1969) 253 N.E.2d. 408 21

Fotochrome v. N.Y. Herald Tribune (N.Y. 1969) 61 Misc.2d. 226 21

Garrison v. Louisiana (1964) 379 U.S. 364 ..... 17, 18, 19, 20, 25, 26, 29

Greenbelt v. Bresler (5-18-70) Case #413, ... U.S. 25, 29, 30

Henry v. Collins (1965) 380 U.S. 3566 ..... 19, 26

Merritt-Chapman v. Associated Press (C.C. Fla. 1970) 33 Fla.Supp. 102 ..... 21, 23, 24

New York Times v. Connor (C.A. 5, 1966) 365 F.2d 567 .. 30

New York Times v. Sullivan (1964) 376 U.S. 254 ..... 3, 5, 15, 19, 20, 26, 28, 29, 30, 32

Rosenblatt v. Baer (1966) 383 U.S. 75 20

CITATIONS—Continued

Page

St. Amant v. Thompson (1968) 390 U.S. 727 ..... 19, 26, 29

Time v. Hill (1967) 385 U.S. 374 ..... 15, 18, 19, 20, 23

Time v. McLaney (C.A. 5, 1969) 406 F.2d. 565 20

United Medical v. C.B.S. (C.A. 9, 1968)
404 Fed.2d. 706 ..... 21, 30

Wasserman v. Time (C.A.D.C., 3/3/70) F.2d 21

Washington Post v. Keogh (C.A.D.C. 1966) 365 F.2d 965 29

Williams v. Georgia (1955) 349 U.S. 375, 383 31

Zwickler v. Koota (1967) 389 U.S. 241 31

MISCELLANEOUS:

Stern & Gressman, Supreme Court Practice
(Fourth Edition), page 127 31

United States Constitution - First Amendment 3

United States Constitution - Fourteenth Amendment 3

28 U.S.C. 1257 2

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1373

OCALA STAR-BANNER COMPANY, ET AL.,

PETITIONERS,

vs.

LEONARD DAMRON,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

Granted May 4, 1970

BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the District Court of Appeal, First District, State of Florida, is reported at 221 So.2d. 459 (A. 18). The opinion of the Florida Supreme Court refusing to review said decision (SC #8)[1] is reported at 231 So.2d. 822. (A. 21)

NOTE 1: We refer to Trial Clerk's certified record (Volume I) as "R"; to the Court Reporter's separate volumes of trial transcript (Volumes II and III) as "TT"; to the record volume in the District Court of Appeal (Volume VI) as "DC"; and to the volume covering the record in the Florida Supreme Court (Items 6-15) as "SC".

We refer to pages in the printed Appendix in this Court as "A".

JURISDICTION

The judgment of the District Court of Appeal, First District, State of Florida (A. 18), under review here, dated and entered on April 22, 1969 (DC #1) is reported at 221 So.2d. 459. The judgment was made final by an Order of the Supreme Court of Florida dated and entered February 20, 1970 (SC #11) refusing to rehear its Order-Opinion of January 21, 1970 (A. 21) (SC #8) dismissing the case for alleged lack of jurisdiction. The Florida Supreme Court had first, in July, 1969, *denied* motion to dismiss the appeal for want of jurisdiction (SC #7) and set the case down for oral argument on the merits.

Under these circumstances, the Writ of Certiorari runs to the District Court of Appeal, First District, State of Florida.

It was necessary to first seek review by the Florida Supreme Court before filing Petition for Certiorari in this Court. See *Banks v. California* (1969) 395 U.S. 708. The question of procedure was covered in our Petition and Supplemental Brief.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257. The judgment of the Florida District Court of Appeal violates the rights of petitioners guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

This Court granted Certiorari by its order of May 4, 1970.

QUESTIONS PRESENTED

1. Does a libel judgment against newspaper Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor (primarily covering damages for loss of election) deprive Petitioners of their Constitutional rights where the

record contains no evidence of (or even consideration given to necessity for) actual malice as defined by this Court?

2. Does the State Court's instruction to a jury (affirmed by the District Court of Appeal) that it must return a libel verdict against Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor without any regard for actual malice, as defined by this Court, deprive Petitioners of their Constitutional rights?

These are the identical questions stated in the Petition on which this Court has granted Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States
Amendment I:

> "Congress shall make no law . . . . . abridging the freedom of speech or of the press . . . . . "

Amendment XIV:

> ". . . (N)or shall any State deprive any person of life, liberty, or property, without due process of law . . . . ."

STATEMENT OF THE CASE

This case is distinguished by Respondent's own self-affixed label.

It is a classic situation for application of the *New York Times* rule. Respondent Leonard Damron, by his *pleadings and testimony*, brought himself squarely within the Federal Rule. He himself tagged the alleged libelous story as on a matter of general public interest. He asserted that he was

Mayor and a candidate for County Tax Assessor; that he had lost the election for each office when the electorate applied the news story to him in his public figure capacity. He sought damages for loss of public office.

Yet the Trial Court *directed* a verdict for him on liability (A. 80-83) without reference to or regard for "malice". Judgment was entered on the verdict. (A. 14, 19)

The time involved was April, 1966, at the height of the civil rights controversy, particularly in the South. The locale was Citrus County, Florida (population 9268 - 1960 U. S. Census) in the rural South. Perjury, civil rights and election campaigns were all matters of great public interest.

Respondent was a small town politician and garage man. He was Mayor of the Town of Crystal River (population 1523), and a candidate to succeed himself. He also sought the paid job (at $9,000 per year) of County Tax Assessor. Respondent left his garage in the hands of his brother, James, while Respondent "politicked" almost full time for County Tax Assessor. Respondent had no qualifications as a real estate broker or appraiser but ran "as a citizen and voter". (TT. 44, A. 49). He ran last in a three-man race. (A. 37)

There was no daily or even bi-weekly newspaper in Crystal River or Citrus County, but Respondent kept a scrap book of his clippings from the daily Ocala Star-Banner (published in nearby Marion County). (TT. 9, A. 27)

James Damron was indicted for perjury in a civil rights case. Petitioners' reporter Ware telephoned the story in to Petitioners' area editor Meier, a newcomer to central Florida, and only on the job for slightly over a month. Meier did not know either brother but had run numerous articles in his short time at Ocala about Leonard Damron's involvements in public controversies. Accordingly, while Ware telephoned

in the correct name (James Damron), Meier ran a story using the name Leonard Damron, the only Damron of whom he knew. Meier had never met Respondent but because of his involvement in public affairs, and the *publicity* sought and received by Respondent, Meier automatically assumed it was Leonard Damron and used that name. (Corrections were run immediately).

Such a judgment against Petitioners is the very thing *New York Times* sought to prevent. If a judgment will stand based on this type of good faith error, the Federal doctrine is meaningless. Mere negligence or oversight is *not* "calculated intent to harm through falsehood."

We discuss the facts hereafter with record and appendix references.

Libel Complained Of

The complained-of story published in the Ocala Star-Banner, as alleged in paragraph 3 of Respondent's complaint (A. 6), was:

> "A case charging local garage owner *Leonard Damron with perjury*[2] was passed over for the present term of Federal court after Damron entered a not guilty plea before Judge Harrold Carswell in Gainesville . . . . . ". (R. 1, 2 – See A. 8 for complete story).

NOTE 2: Emphasis here and elsewhere added by counsel unless otherwise indicated. Respondent emphasizes that he was not called a "public figure" or "public official". But in his complaint he specifically alleged the public-figure capacity and that he lost the election because of it. Meier, the area editor, infra, thought it was the public figure and that is the reason he used Leonard's name.

Respondent Alleged Public Figure Damages

Respondent did not file his suit in Citrus County where his alleged damages arose and where he was well known. He filed it in Marion County.

Respondent alleged in paragraphs 6, 9, 10 and 11 of his complaint (R. 2, 3 - A. 6, 7) on which he went to trial, that he was a *public figure and sustained damages in that capacity* as follows:

> "6. That the Plaintiff is and was on April 18, 1966, *a public officer, being elected to the office of Mayor of Crystal River, Citrus County, Florida, and on said date was a candidate for the office of Tax Assessor for Citrus County, Florida,* and was and is a businessman in said Town and County, owning and operating a garage. The plaintiff, Leonard Damron, is the only garage owner by the name of Leonard Damron doing business in the Marion, Citrus, Levy and Sumter County area."
>
> * * * * *
>
> "9. That the aforesaid article published on April 18, 1966, by the Defendants, set forth as Plaintiff's Exhibit "A", was published at a time and in a newspaper in general circulation in an área where *voters* resided who would cast their votes in a democratic primary on May 3, 1966, in which primary the *Plaintiff was a candidate* for the office of Tax Assessor of Citrus County, Florida, opposing two other candidates. That *throughout the remainder of the political campaign,* from April 18, 1966, the Plaintiff was repeatedly required to answer questions regarding the charges against him of perjury purportedly pending, and that although the Plaintiff fervently denied such charges and endeavored to make

it known that the statements printed in said article were false, he has been unable to remove the damage to his reputation caused by said article."

"10. That the Plaintiff continues to hold the office of *Mayor* of the Town of Crystal River, Citrus County, Florida, having been duly elected to said office prior to the publication of the said article attached hereto as Plaintiff's Exhibit "A," and Plaintiff *desires to continue to hold this office for which he will be required to campaign* and run for re-election in December of 1966, and overcome the false and defamatory statements in said article that Defendants have caused to be published, which continue to create doubt and suspicion in the mind of the people of Citrus County, Florida, as to the integrity of the Plaintiff."

"11. Because of the actions of the Defendants in the publication of the aforesaid article as attached hereto as Plaintiff's Exhibit "A", the plaintiff has suffered irreparable damages to his reputation, as an individual, *public officer, candidate for public office* and as a businessman." * * * * *

Thus, Respondent expressly alleged his case to come within the purview of the Federal Constitutional Law of Libel, a factor not considered in the District Court opinion. Respondent made his own bed and must lie in it. His own complaint shows the public interest.

Petitioners moved to *dismiss* the complaint since it failed to allege that the publication of the article was made "maliciously" and also failed to allege "wantonness, recklessness or carelessness". (R. 7, A. 10)

Petitioners further moved to *strike* the first two clauses of the first sentence of paragraph 6, and also paragraphs 9 and

10, all quoted above, and claiming "*public figure*" damages. (R. 8, A. 10)

Petitioners further moved to strike the portion of paragraph 11, "alleging damages to plaintiff's reputation either as a *public officer or as a candidate for public office.*" (R. 8, A. 10)

All of Petitioners' above motions were denied. (R. 9, A. 11)

Directed Verdict at Trial Upheld

Answer was filed denying the material allegations (R. 10, A. 12) specifically denying malice (A. 14), and the case went to trial. At the trial, the jury was given no instructions on "express malice". Instead, it was instructed that since the publication charged the crime of perjury, this was libel per se, malice was imputed or presumed, no proof of malice was required, and the only question was the amount of damages (TT. 301, 303, 305, 306, 307, A. 80-83), including damage to Respondent as a "*public official*". (TT. 304, A. 82). As stated in the District Court opinion "a *directed verdict* on the question of liability was granted." (A. 19)

The jury failed to find punitive damages. It did bring in a verdict for $22,000.00 compensatory damages. (R. 18, 19, A. 14)

Motion for new trial was filed emphasizing that the evidence was insufficient to satisfy the Constitutional rule. (R. 20, 21, A. 15)

The Court denied the motion (R. 22, 23, A. 17), the District Court of Appeal affirmed, and the Florida Supreme Court, after briefs and oral argument, dismissed appeal for alleged want of jurisdiction after it had *first* held it did have jurisdiction and had denied motion to dismiss appeal for want of jurisdiction.

The District Court opinion (A. 18) erroneously construed the First Amendment as not requiring proof *or* allegation of "express malice" in the case of public figure Damron so suing for public figure damages on a matter of public interest. It erroneously construed the First Amendment as follows:

> ". . . . . Our impression is that it is the public officer's *official conduct* or the manner in which he performs his duties that affords the media a wide latitude for comment. It is the plaintiff officer's *performance of duty* that is so affected by the public interest which justifies the protection from libel actions afforded by the *New York Times* doctrine in the absence of proof of malice. . . . . The plaintiff's official conduct or the manner in which he performed his duties were not the basis for the inaccuracy here involved; and hence, it does not come within the protection afforded by the rule announced in the *New York Times* case. It follows, therefore, that the trial judge correctly held that it was unnecessary for the plaintiff to show malice." (A. 20)

It is this dangerous, utterly erroneous, and completely misleading language that will cause the Federal Constitutional Law of Libel to be almost meaningless in Florida (and particularly in the First District) until this opinion is reversed and comes out of the case books.

SUMMARY OF ARGUMENT

1. Not only did Respondent plead and claim public figure damages, but the evidence at the trial clearly showed that the real issue was Respondent's public figure damages, i.e., the alleged loss of the elections, and that the story was on a matter of public interest.

2. The decision of the Florida District Court of Appeal that the Federal Constitutional Law of Libel was limited to "official conduct" or performance of duty" is a flat rejection of the rulings of this Court. The rule applies as well to a public figure (like Respondent), to a candidate (like Respondent), to the fitness and qualifications of an official or candidate (like Respondent), and to a matter of public interest (like that here involved).

3. Respondent's argument that the federal doctrine does not apply because Respondent was not referred to in the story as "Mayor" or "candidate" is not tenable. Under the pleadings and the evidence, Respondent elected to claim the article was on a matter of public interest and that the voters applied the article to him in his public figure capacity.

He alleged and proved damages for loss of elections and injury to him as Mayor and candidate for public office. The real test of the doctrine is the public interest.

4. This Court has repeatedly delineated the Federal Constitutional Law of Libel to show that the public interest is the vital test.

5. Respondent has made his own bed and must lie in it. Having claimed "public figure damages" and predicated his entire case on the public interest, it is now too late to say that the Federal doctrine does not apply.

6. The Florida court incorrectly construed the Federal Constitutional Law of Libel. And Respondent's argument in his Brief in Opposition to Certiorari shows that he likewise has misconstrued the breadth and full effect of the Federal rule.

7. Respondent Plaintiff's testimony is reproduced in full in the Appendix (A. 26-60). Also reproduced is everything

else designated by Respondent. It shows a complete absence of "proof of convincing clarity" of a "calculated intent to harm through falsehood". The error was an innocent one (by a newcomer to the area) who confused two brothers, in a story on a matter of public interest. This Court should order the court below to enter up judgment for Petitioners.

ARGUMENT

1. Evidence at the Trial

There was no dispute but that the Petitioners erroneously published that Respondent had been indicted for perjury rather than his brother, James Damron (who was running Respondent's business while Respondent campaigned - TT. 33, A. 42)

As above stated, on April 18, 1966, Petitioners' Area Reporter Ware telephoned in a story with respect to a Damron being charged with perjury in Federal Court in a civil rights case, a matter of public interest (TT. 163, A. 75) (R. 6, A. 5). The story was telephoned in to Petitioners' Area Editor Meier who had only been in the Ocala area for a few days over a month (TT. 153, A. 73), and who did not know Damron except by his reputation as a public figure (TT. 171, A. 76). Damron was so much in the public eye that numerous stories had been in the paper about him, handled by Meier (TT. 164, A. 76). Although the reporter says she telephoned in the correct name, Meier thought they were talking about Respondent, the public figure, about whom he had published so many prior stories. Accordingly, he automatically wrote down and used in the story the name of Leonard Damron rather than the name of Respondent's brother, James Damron (TT. 163, A. 75)

It being conceded that Petitioners had published the story and made the error (albeit an innocent one, free of malice), Respondent based his case almost entirely on his *public figure* damage.

At TT. 9, A. 27, Respondent testified:

> "I have been Mayor for four terms --- well, I kept a scrap book (Ocala Star-Banner articles) and to where I could always refer back to my activities as Mayor and all the other civic organizations I belong to."

At TT. 12, A. 29, he said:

> "I felt like it (the publication) had ruined me – I was running for Tax Assessor at that time and I had already covered probably two-thirds of the county from door to door, with political speeches, and running ads in the newspapers and I was so upset – I called you (plaintiff's attorney) and asked for your advice – and wrote the Ocala Star-Banner a letter - "

At TT. 13, A. 30, Respondent read to the jury *his* published letter to the Ocala Star-Banner,[3] from which we quote:

> "You are advised that the undersigned Leonard Damron has never been charged with the crime of perjury, is presently Mayor of the Town of Crystal River, and is presently a candidate for Tax Assessor of Citrus County, Florida."

NOTE 3: Petitioners not only published Respondent's letter (TT. 192) but upon the error being discovered, they had previously on their own volition run a correction and retraction the day after the error appeared (TT. 155-6, A. 74). As stated by Petitioner Publisher: "We ran three corrections on two different days." (TT. 194). In interrogating the Publisher before the jury, Respondent's counsel once again emphasized that Petitioners *knew* that, and Respondent *was*, "a public offic holder" and "*was also* a candidate for Tax Assessor of Citrus County, Florida" (TT. 193).

At TT. 192, Respondent's counsel had another witness again read to the jury his exact above letter as to his public figure status.

We further quote from the trial transcript:

"Q. Immediately after the publication of this article, what was the reaction of people to you from whom you would *solicit votes*?

A. Very cold." (TT. 24, A. 36)

* * * * *

"Q. Were you able to overcome the effect of this publication on your candidacy as Tax Assessor?

A. No, sir.

Q. What was the result of the election?

A. I got beat." (TT. 24, 25, A. 37)

* * * * *

"Q. Now, then, Mr. Damron, as to the office of Tax Assessor for which you were running, do you know what the annual compensation is in that office?

A. $9,000.00 a year." (TT. 28, A. 39)

"Q. After this publication of the article, did you run again for the office of Mayor of Crystal River?

A. Yes, sir." (TT. 26, A. 38)

* * * * *

"Q. What, if any, voter opposition did you meet in campaigning for this office in the year 1966 that you did not meet in prior years?

A. The vote was . . . . . the public was a little cooler . . . . . they wasn't as friendly . . . . ." (TT. 27, A. 38)

Respondent testified he was *defeated for Mayor* by 28 votes the last time (TT. 50, A. 52).

Respondent's twelve witnesses repeatedly testified on the alleged bad effect Petitioners' publication had on the voting public and Respondent's chances for election. (TT. 66, (A. 61), 68, (A. 61), 94, (A. 64), 105, (A. 65), 109, (A. 66), 117, (A. 67), 123, (A. 67), 129, (A. 68), 140, (A. 69). Not one of them testified to (a) any express malice, or (b) any monetary damage other than *loss of public office and campaign contributions.* (TT. 68, A. 61)

As indicated, Respondent's complaint did not allege that Petitioners published the statement about Respondent with actual malice as defined by this Court. For this reason, Petitioners moved to dismiss the complaint and to strike allegations as to public figure damages therefrom, prior to trial. The trial record does not contain a scintilla of evidence that Petitioner's story was written with actual malice as defined by the Court. Far from proof of "convincing clarity", there was no evidence at all of express malice. Nonetheless, the Court *directed a verdict for the Respondent* on the erroneous assumption that a charge of perjury "was libelous per se" (TT. 303, A. 82), there "must be a finding in favor of plaintiff" (TT. 301, A. 82), and that Respondent was entitled to *compensation* for "injury to his reputation as a citizen and *public official*". (TT. 304, A. 82)

2. Lower Court Ruling Is Flat Repudiation of This Court

The opinion of the District Court of Appeal (A. 18) is a flat repudiation of the rulings of this Court.

The ruling of the Florida Court applies the Federal Constitutional Law of Libel *not* to public figures, candidates, and matters of public interest, as held by this Court. Instead, it limits the doctrine to Respondent's "*official* conduct or the manner in which he performed his *duties*".

Even Respondent's own counsel finally recognized that this was erroneous, and we quote from page 17 of Respondent's brief before the Supreme Court of Florida:

> "This decision [Time v. Hill (1967) 385 U.S. 374] clearly shows that the United States Supreme Court is granting a privilege under the First Amendment to the United States Constitution when the article is directed to official conduct, official duties, public issues, *matters of public interest,* and public affairs."

The trial court directed a verdict on the ground that the *New York Times* doctrine had no application here since the story did not *specifically* refer to Respondent as a *public official* or to his *official conduct.* The Florida Court utterly ignored in this case that the Constitutional protection goes much beyond official conduct and performance of official duties, and extends to matters of public interest. Especially is this true when Respondent's entire case is bottomed on the damage that he sustained when he was defeated for election as County Tax Assessor and was later defeated for re-election as Mayor.

Newly-arrived Area Editor Meier thought it was the public figure involved in the indictment for perjury, and he wrote the story about the public figure. Respondent said that the public applied the story to Respondent in his public figure capacity and that is the reason he lost the votes in the election.

It is our clear recollection that it was stated by counsel for both sides in oral argument before the Supreme Court of Florida that they understood the $22,000.00 verdict was made up of two years' salary as County Tax Assessor at $9,000.00 per year, plus $4,000.00.

Petitioners were deprived of their Constitutional rights because the Florida Courts limited the Constitutional rule to *official conduct* of a *public official.*

Respondent cannot have his cake and eat it, too. He cannot recover public figure damages without being subject to the *New York Times* rule of public figure damages. The rule applies to matters of public interest.

3. Respondent's Argument Not Tenable

Respondent asserts that the story did not in so many words refer to Respondent as "Mayor" or as "candidate for County Tax Assessor, or as "a public figure". The District Court opinion emphasized this.

It is apparently Respondent's theory that a story charging "President Richard Nixon" with perjury comes under the Federal rule. But the same story charging only "Richard Nixon" does not, even though "public figure" damages are specifically sought.

Suppose Respondent had been referred to as "Mayor". Could he still recover damages as a candidate for County Tax Assessor without complying with the Federal rule?

To state the proposition is to demonstrate its absurdity. Mr. Nixon and Respondent are each "a public figure", in his own sphere, regardless of how he is designated.

If they seek "public figure damages", they come under the "public figure rule".

The Federal doctrine did originally apply on its face to "official conduct of public officials". The District Court of Appeal simply did not realize that it has successively been *extended* to "candidates", to mere "public figures", and to "matters of public interest".

Obviously, there can be no "official" conduct of a public figure. Walker was not engaged in official conduct in the *Associated Press* case. As stated at 338 U.S. 154, Walker "commanded a substantial amount of public interest at the time of the publication", just as did the Mayor of Crystal River, Florida, and candidate for County Tax Assessor, in his area. It was because of Damron's public figure activities and the interest the public had in him that Meier (who did not know Respondent) thought it was Respondent who was involved and therefore wrote the story about Respondent. Had Respondent not been a public figure his name would not have been known to Meier and would never have been used.

Wally Butts was a football coach employed by a corporation, and Edwin Walker was a private citizen. Butts was accused of fixing football games -- Walker of leading a riot. See *Curtis Publishing Company v. Butts*, infra.

What "official conduct of a public official", as the doctrine is limited by the Florida District Court of Appeal, was involved in either case?

It is not necessary to designate "Richard Nixon" in so many words as a "public figure" or "President" or as "a man in the public eye" to make him a public figure. The test is whether he actually is a public figure or whether we have a matter of public interest. The same thing applies here.

Here, Respondent *removed any doubt.* He not only specifically alleged he was "Mayor" and "candidate for County Tax Assessor" in his complaint, but claimed he was "harmed with the electorate" and actually lost both offices because of the article. How could there be any clearer application of the *Curtis Publishing* and *Garrison* cases, infra, which prevent public figures from collecting damages (either to their

public or personal reputations) without proving "calculated falsehood"? But the words "public figure" or "matter of public interest" do not appear once in the District Court opinion. So far as the District Court was concerned, *Time*, *Curtis Publishing*, *Garrison*, and *Associated Press* were never enunciated by the United States Supreme Court.

The public and private reputation damages are inextricably mixed in the verdict, and *Garrison*, infra, holds that private reputation damages come under the Federal rule once public reputation is damaged.

We repeat, Respondent cannot have his cake and eat it, too. When Respondent decided to claim the public and the electorate applied the news story to him as Mayor and candidate for County Tax Assessor, he himself invoked the Federal rule. He asserted he was a public figure and had been damaged as a public figure.

The District Court opinion shuts its eyes to this paramount and overriding factor which Respondent himself elected to inject into the case, and on which he sought and recovered public figure damages, i. e., the application by the voting public of the alleged libel to plaintiff in his public figure capacity and his consequent loss of his political races. It was a matter of public interest.

The District Court opinion is erroneous, dangerous and misleading.

In the *New York Times* case, in *Butts*, in *Walker*, and in *Hill*, all cited infra, as well as in the case presently before the Court, the function served by the First Amendment was to provide the public with information on matters in which it had a legitimate and substantial interest. If the plaintiff in a particular case occupies a position of some "public" status,

the public may have a legitimate and substantial interest in statements about him solely for that reason. But this would merely be an incidental aspect of the broader base of the First Amendment protection, the right to inform the public on matters of legitimate public interest, not the basis for a mechanically restrictive rule.

The story here was on a matter of public interest because of the indictment in a civil rights case for perjury. Even if it had not related to a public figure, the newspaper had a right to run a story on a matter of public interest, i.e., federal indictment of a business man for *civil rights perjury*.

4. Federal Constitutional Law of Libel

There is no need to repeat in detail to this Court what it has said so many times. Plaintiff in any libel action to which the Constitutional rule applies (and this includes stories about public officers, candidates for public office, public figures, and matters of public interest) must prove "actual malice" with "convincing clarity". "Actual malice" means "actual knowledge of falsity" or "recklessness". *New York Times v. Sullivan* (1964) 376 U.S. 254.

"Recklessness" means "a high degree of awareness of probable falsity". *Garrison v. Louisiana* (1964) 379 U.S. 364.

"Intent to harm" does not suffice. There must be "intent to harm through falsehood". *Henry v. Collins* (1965) 380 U.S. 356.

"Failure to investigate" does not impair the privilege. *Beckley v. Hanks* (1967) 389 U.S. 81; *New York Times*, 376 U.S. 287-288; *Time*, 385 U.S. 374, 388-389; *Curtis Publishing*, 388 U.S. 153-154.

"Recklessness" also means "serious doubts as to truth". *St. Amant v. Thompson* (1968) 390 U.S. 727.

And in the case of a public figure, the doctrine covers *private reputation* as well as *public reputation*. "To this end, anything which might touch on an official's *fitness for office* is relevant. Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character." *Garrison*, supra, 379 U.S. at page 77.

The Constitutional test has thus been established by the Supreme Court beyond doubt.

Public interest had been the basis for the holdings in *New York Times* (page 269) and *Garrison* (pages 74-5), even though the actual holding in those cases was limited to public officials. It was also the basis for the holding in *Rosenblatt v. Baer* (1966) 383 U.S. 75, 84-6. It was the direct holding in *Time v. Hill* (1967) 385 U.S. 374. It was likewise the basis for the holding in *Curtis Publishing Company v. Butts* (1967) 388 U.S. 130, 150-2, which case extended the doctrine to *public figures*.

Recognizing that the public interest in the statements at issue was the basis for the grant of constitutional protection in the *New York Times* case, in *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964), in *Butts*, 388 U.S. at 150-152, and in *Walker*, 388 U.S. at 155, and the clear holding of this Court in *Time, Inc. v. Hill*, 385 U.S. 374, 387-388, both the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Fifth Circuit have explicitly recognized the inevitable applicability of the public interest test in a defamation context. In each case, this Court denied certiorari. See *Time, Inc. v. McLaney*, 406 F.2d. 565 (5th Cir. 1969), cert. denied,

395 U.S. 922 (1969) involving a gangster; and *United Medical Laboratories, Inc. v. Columbia Broadcasting System,* 404 F.2d 706 (9th Cir. 1968), cert. denied, 394 U.S. 921 (1969) involving a medical laboratory. Other courts have also recognized that the "public official" and "public figure" cases in this Court were but specific applications of the broader constitutional principles upon which those decisions are founded, and consequently have not viewed the status of the plaintiff as critical but have accepted and applied the public interest or issue basis for application of the First Amendment privilege. See *Bon Air Hotel, Inc. v. Time, Inc.* 295 F.Supp. 704 (S.D. Ga. 1969), affirmed by C.A. 5, May 6, 1970, ... F.2d. ....., concerning an *old hotel; All Diet Food Distributors, Inc. v. Time, Inc.*, 290 N.Y.S. 2d. 445 (N.Y. Sup. Ct. 1967), involving a *food store; Fotochrome, Inc. v. New York Herald Tribune, Inc.* (Sup. Ct. of N.Y. 1969) 61 Misc. 2d. 226, involving a *corporation; Farnsworth v. Tribune Company* (Sup. Ct. of Ill. 1969) 253 N.E. 2d. 408, involving a *doctor; Wasserman v. Time* (C.A.D.C., March 3, 1970) ..... F.2d. ....., involving a Mafia *attorney;* and *Merritt-Chapman & Scott Corporation v. Associated Press, et al.,* (C.C. Fla. 1970) 33 Fla. Supp. 102, involving a *corporation's* financial difficulties. These cases all conform to the principles and analysis announced by this Court.

5. Respondent Has Made His Own Bed

The newspaper under the First Amendment had the right to report stories of public interest, which would include the indictment for perjury in a civil rights case. But if there had been any doubt as to the First Amendment applicability, Respondent removed all doubt by his pleadings and proof of public interest and public figure damages.

Here we had a small rural county with not even a daily

or bi-weekly newspaper of its own. The time was April, 1966, *at the height of the civil rights controversy* and in the midst of an election campaign. News Editor Méier erroneously (but without malice) understood that it was the Mayor and candidate for County Tax Assessor who had been indicted for perjury in a civil rights case, and wrote the story about him. Then, to remove any doubt, Respondent plaintiff filed his suit, alleged that he was Mayor and candidate for County Tax Assessor, that the public applied the story to him in that public figure capacity, that he was damaged "as a public official, candidate for public office . . . . . ", and that he lost the elections for County Tax Assessor and for re-election as Mayor. Notwithstanding Respondent predicated his case on the public figure angle, and his testimony was almost exclusively on that alleged damage, the Court did not even let the jury consider the question of malice. Instead it told the jury that the only question was how much money Respondent was entitled to, and that his damages expressly included damage to him as a "public official."

Respondent has made his own bed and must lie in it.

6. Florida Court Incorrectly Construed Federal Law

Respondent devotes only two full pages of his brief in opposition to certiorari to the real issue in the case - his flat and completely wrong contention, on page 8, that "the libel of public official on a matter *unrelated to his official conduct* does not come within the rule laid down in *New York Times v. Sullivan.*"

Among other things, he failed to consider qualifications and fitness for public office, and the matter of public interest.

Despite Respondent's present argument, we quote again the

concession Respondent made on page 17 of his written brief before the Supreme Court of Florida:

> "This decision (Time v. Hill (1967) 385 U.S. 374) clearly shows that the United States Supreme Court is granting a privilege under the First Amendment to the United States Constitution when the article is directed to official conduct, official duties, public issues, *matters of public interest,* and public affairs."

Is is a matter of public interest. The fact that the plaintiff is a public official or public figure helps determine the extent of public interest. And when Respondent alleged and proved the public applied the story to him *as* Mayor and *as* a candidate for public office, and he sought and recovered damages for *loss of the elections occasioned thereby,* he is *estopped* to deny the public interest in the story. An indictment for perjury in a civil rights case - particularly in a Florida rural county in 1966 - was a matter of real public interest.

On March 5, 1970, the Circuit Court for Dade County, Florida, Crawford, J. (*not* in the First District Court of Appeal district) in granting the news media summary judgment in a libel suit for falsely accusing plaintiff *corporation* of being "bankrupt", held:

> "Clearly, the *New York Times* doctrine applies to a situation such as that here, for not only was the plaintiff the alter ego of its principal officer and controlling stockholder, Louis Wolfson, who was very definitely a public figure, but *the matter was one of wide public interest.* See All Diet Foods v. Time (N.Y. 1968) 290 N.Y.S.2d. 445, applying the doctrine to a *food store;* Bon Air v. Time (S.D.Ga.1969) 295 Fed.Supp. 704, applying the doctrine to an *old hotel;* Altoona v. Dun & Bradstreet (W.D.Pa.1968) 286 Fed.Supp. 899, applying

the doctrine to a *corporation* suing for damage to its credit; Fotochrome v. New York Herald Tribune (N.Y. Sup.Ct.1969) 61 Misc.2d.226, a case on almost all fours with that here, where the doctrine was applied to a news story about the financial standing of the plaintiff *corporation* and where the paper gots its erroneous data from reliable sources; United Medical v. C.B.S. (C.A.-4, 1968) 404 Fed.2d. 706, where the doctrine was applied to a medical *laboratory*, certiorari denied at 394 U.S. 921; Time v. McLaney (C.A.Fla.1969) 406 Fed.2d. 565, certiorari denied at 395 U.S. 922, on a holding that the doctrine applied to a matter of *public interest;* and Rosenbloom v. Metromedia (C.A.-3, 1969) 414 Fed.2d. 892, where again the doctrine was applied to a matter of *public interest.* In all cases, judgments were entered for the defendant news media."

> *Merritt-Chapman & Scott Corporation vs. Associated Press, Florida Publishing Company, et al.* (Fla.C.C.,1970) 33 Fla. Supp. 102 (Advance Opinion Sheet).

In *Merritt-Chapman* there was no public official and no official conduct.

This holding, in our judgment, not only correctly states the law but is in accord with Respondent's statement in his Florida Supreme Court brief, page 17, above quoted.

Respondent admitted in his brief before the Florida Supreme Court that the Federal doctrine applies to "matters of public interest". But now he rests his entire case on his flat assertion that when a *"public official"* is involved, the doctrine is limited to *"official conduct"*. How can that be?

A matter may be of public interest. But if plaintiff happens to be President Nixon, or Senator Jones, or Governor

Kirk or Mayor Damron, or candidate for County Tax Assessor Damron, that *increases* the public interest - not *eliminates* the applicability of the Federal rule.

Respondent on page 6 of his brief in opposition to certiorari made the further erroneous statement that this Court "has *not* commingled the rules laid down by this Court on public *officials* with the rules on public *figures*."[4] (Respondent was *both*).

This is the same false reasoning applied by the District Court of Appeal. Both Respondent and the court below have completely overlooked the fact that later cases have expanded the original holding. Just as the doctrine is not confined to "official" conduct of a public figure, nor does it require "official conduct" to make it a matter of "public interest", the doctrine is not so confined in the case of a public official.

Respondent was not only a "public official" (Mayor) but was also a public figure (candidate for County Tax Assessor and for re-election as Mayor) and the story involved an indictment for perjury in a civil rights case - a matter of great public interest.

As stated in *Garrison* v. *Louisiana* (1964) 379 U.S. 364, the doctrine extends to "private reputation as well as public reputation" and "anything which might touch on an official's fitness for office is relevant."

When Plaintiff-Respondent sues, says he is a public official and candidate for public office, that the public applied the story to him in that capacity, that he lost the elections because thereof, and he asks for specific damage to him as a public figure, he cannot then say the Federal rule does not

---

NOTE 4: This is direcly contrary to *Greenbelt*, infra, where this Court said: "And the constitutional prohibition in this respect is no different whether plaintiff be considered a public official or a public figure". See also *Associated Press*, 388 U.S. at 163, 164.

apply. He has made his own bed (by his pleadings and proof) and he must lie in it.

Respondent himself injected the Federal doctrine into the case. He cannot have his cake and eat it too.

He it was who said the electorate applied the story and found wanting his qualifications for public office.

7. Judgment Should Be Ordered for Petitioners

As discussed hereinabove, the fundamental concept of actual malice, as enunciated in *New York Times*, requires a public figure plaintiff, such as *Damron* here, to prove "with convincing clarity" that the alleged libel was published "with knowledge that it was false or with reckless disregard of whether it was false or not". (376 U.S. at 280).

Subsequently, in *Garrison v. Louisiana* (1964) 379 U.S. 64, at 67, this Court held that the "recklessness" concept of malice requires a showing of "a high degree of awareness of probable falsity".

Then in *Henry v. Collins* (1965) 380 U.S. 356, this Court held that "intent to harm" is not sufficient. There must be "intent to harm *through falsehood*". See page 357.

In *Beckley v. Hanks* (1967) 389 U.S. 81, the Court confirmed that the failure of the defendant newspaper to make an investigation prior to publication is insufficient to constitute "recklessness".

Lastly, the Court held in *St. Amant v. Thompson* (1968) 390 U.S. 727, at 730, that the concept of recklessness requires a showing by the plaintiff that the defendant "entertained serious doubts as to the truth" of the publication.

Summing it up, the burden was on Respondent-Plaintiff to prove "intent to harm through falsehood", and to do so by

"proof of convicing clarity". In this Respondent-Plaintiff failed completely.

We have printed in the Appendix the complete transcript of Respondent-Plaintiff's testimony (as well as all other testimony relied on or designated by Respondent) to show there was no proof of any kind of a calculated "intent to harm through falsehood", let alone "proof of convincing clarity".

Meier just simply made a *human error* in thinking and writing it was Leonard Damron, the public figure, involved, rather than his brother. He wrote the wrong first name.

Erroneous this may have been, and probably was.

Careless Respondent may think it was.

Negligent it may have been.

But under no circumstances can Petitioners' actions be said to be *malicious*[5] under the Federal Constitutional Law of Libel. Plaintiff, like other candidates and public figures, sought publicity. And such error, in the case of a public figure, and a matter of public interest, is protected by the First and Fourteenth Amendments to the Constitution of the United States unless there be a calculated and deliberate falsehood with intent to harm through falsehood (which there was not here).

Meier (a newcomer to Ocala) had never even met Respondent and only knew *of* him because of his prior participation in public controversies and affairs.

As in *Beckley*, supra, where anti-plaintiff editorials running back to 1960 were introduced, the trial court permitted plain-

---

NOTE 5: It is of considerable significance that the jury did not bring in punitive damages where express malice was required (TT. 303, R. 18, A. 82, 14) and where Respondent sought $500,000.00 punitive damages (A. 8). And the Court *directed* a verdict on liability for compensatory damages without regard for malice.

tiff Damron to read into the record three 1965 news stories which he claimed were false. (TT. 16, 17, A. 31). Just as in *Beckley*, these are in no way sufficient to show the requisite proof with "convincing clarity" of any "calculated intent to harm through falsehood". Meier had nothing to do with these 1965 stories (TT. 17, A. 32). He did not become area editor until about a month before the article complained of was published on April 18, 1966 (TT. 153, A. 23). The record shows no complaint by Respondent about any prior article written by Meier.

The first 1965 article said Damron "walked out of a council meeting". (TT. 16, A. 31) While Damron conceded he had differences with the council (TT. 17, A. 32) he denied he had ever physically walked out. The second article (TT. 16, 17, A. 31) said Mayor Damron "had clashes with the council". Respondent said "just because I have disagreed with the council I haven't clashed****" (TT. 17, A. 32) But Respondent stated he had always been opposed by a "click" (sic). (TT. 49-51, A. 52) The third article, Damron said, gave an erroneous figure for the retainer of the City Attorney (TT. 17, A. 32).

Certainly these articles are not a sufficient basis on which a jury could find "express malice". Even if Meier had authored the 1965 articles (which he did not) they appear to us, and we believe this Court will agree, to be rather innocuous.

The attempt of Respondent's Counsel to show malice through these innocuous news stories (TT. 19, A. 23) has no merit.

Even under a proper charge, a jury verdict finding of "actual malice" could not be sustained on this record. The Court stated in *New York Times* that "considerations of effective

judicial administration require" the appellate court "to review the evidence in the present record to determine whether it could constitutionally support a judgment" for the plaintiff. 376 U.S. at 284-285. The Court reiterated the principle that, in cases involving free speech, an independent examination of the record is warranted, 376 U.S. at 285, and proof of actual malice must appear to be of a convincing clear quality, 376 U.S. at 285-286; *Beckley*, 389 U.S. at 83; *Greenbelt*, infra.

In *Beckley*, there was testimony on the record that defamatory editorials were written by employees of the defendant merely because "there was cause on their part to feel there was that possibility". 389 U.S. at 84. Nonetheless, the Court held this to be insufficient to establish the high degree of awareness of probable falsity necessary for a finding of actual malice.

The Court in the *New York Times* case did not consider the charges there involved, which were at least as "inflammatory" as the one in the present case, as evidence of actual malice or reckless disregard of the truth. See *Garrison v. Louisiana*, 379 U.S. at 74; *Washington Post Co. v. Keogh*, 365 F.2d. 965, 970 (D.C. Cir. 1966).

In *St. Amant v. Thompson*, (1968) 390 U.S. 727, plaintiff maintained the defendant had published with no personal knowledge of the facts; relied solely on the affidavit of a source whose veracity was undisclosed by the record; failed to verify with individuals who might have known the facts; proceeded regardless of whether the published statements were defamatory, without considering the consequences; and published believing that there would be no responsibility for the broadcast because it merely restated the views of the source. The Court there held that a jury finding of actual malice could *not* be supported on the record.

In *Greenbelt v. Bresler*, #413, ... U.S. ....., 38 L.W. 4390, this Court on May 18, 1970, reaffirmed the broad sweep of the First Amendment protection of freedom of speech and press. It specifically held, contrary to the flat pronouncement of the Florida District Court of Appeal here, that the "constitutional prohibition in this respect *is no different* whether plaintiff be considered a 'public official' or a 'public figure'", and that it embraced news stories on matters of public interest. In the *Greenbelt* case, the news story dealt with plaintiff real estate developer appearing before a City Council. There was no official conduct of a public official of any kind by plaintiff Bresler.

The lower court libel judgment against the newspaper was reversed because "the jury was permitted to find liability merely on the basis of a combination of falsehood and general hostility." This Court made its own "independent examination of the whole record" to satisfy itself there had not been "a forbidden intrusion on the field of free expression."

Here, the *record would not support* nearly as much as the Supreme Court held in *Greenbelt* to be constitutionally insufficient.

Accordingly, since a reading of the trial transcript shows a complete *absence* of "express malice" - far from "*proof of convincing clarity*" thereof - we respectfully urge this Court to direct the court below to enter up judgment for Petitioners, and end the matter, once and for all.[6]

This is not a case where the constitutional issue was evaded or overlooked. The trial court flatly denied a motion to

---

NOTE 6: The publisher testified and there was no dispute but that the newspaper "ran three corrections" after the error was discovered (TT. 194). But even if the newspaper had failed to correct, that is not constitutionally sufficient to constitute evidence of "express malice". See *New York Times v. Sullivan* (1964) 376 U.S. 254,286; *United Medical v. CBS* (CA-9, 1968) 404 Fed.2d. 706,713; and *New York Times v. Connor* (CA-5, 1966) 365 Fed.2d. 567,577. Failure to retract *after* the article is printed cannot show calculated intent to harm through falsehood *existing at the time* the article is printed.

strike the "public figure" damages and damages as "public officer or candidate for office" (A. 10, 11). In denying motion for new trial, the Court expressly (albeit erroneously) held the verdict was "supported by the evidence" and that the "New York Times and subsequent decisions *cited* in defendants' motion for new trial" were "not applicable to this cause of action" (R. 20, 21, A. 15). These grounds were set out at length in the motion. (A. 15).

As stated, the decision of the District Court of Appeal covered solely and only the Constitutional question (A. 18).

For just what purpose the Respondent directed that the Appendix include some Florida procedural rules is hard to understand. Counsel before this Court came into the case *after* the trial, but the *record* shows that no Florida Court referred to or cited any of Respondent's Rules, or gave them as any purported excuse for not deciding the Constitutional question. *In fact,* the trial court and appellate court *did decide that Constitutional question.* Unfortunately, they decided it wrongly. Further, these rules were *not mentioned* in the briefs and arguments in, or the orders of, the Florida Supreme Court.

And as held in *Zwickler v. Koota* (1967) 389 U.S. 241, 249, no possible construction here can "*avoid* or modify *the constitutional question*". Cf. Stern and Gressman on Supreme Court Practice, and cases cited - Fourth Edition, page 127; Williams v. Georgia (1955) 349 U.S. 375, 383.

As stated in *Evans v. Abney,* ..... U.S. ....., 24 L.Ed.2d. 634, 643 (January 26, 1970):

> "No state law or act can prevail in the face of contrary federal law, and the federal courts must search out the fact and truth of any proceeding or transaction to determine if the Constitution has been violated."

The completely erroneous opinion of the District Court of Appeal must be removed from the case books. It is squarely contrary to the First Amendment as spelled out by this Court.

In *Beckley,* this Court reversed outright plaintiff's libel judgment and judgment was subsequently entered up for the newspaper. This was done *even though* objection had not been made in the trial court to improper jury instructions and the newspaper counsel had themselves requested inadequate instructions.

We quote from 389 U.S. at 82, 83:

> However, since it is clear that the jury verdict was rendered upon instructions which misstate the law and since petitioner has properly challenged the sufficiency of the evidence (just as was done by motion for new trial, R. 20, A. 15, in the Damron case) we have undertaken an independent examination of the record as a whole 'so as to assure ourselves that the judgment does not constitute forbidden intrusion on the field of free expression'. ***** It cannot be said on this record that any failure of petitioner to make a prior investigation constituted proof *sufficient to present a jury question* whether the statements were published with reckless disregard of whether they were false or not."

The judgment was thus reversed. The same thing should be done here.

There was no "intent to harm through falsehood" and nothing in the trial court record would justify such a finding by the court or jury.

Respondent seeks a total of $550,000.00 damages. *New York Times* sought to eliminate the "chilling effect" of such litigation. Petitioners should not be put to the expense of another trial.

CONCLUSION

We repeat what we said in our earlier briefs.

Respondent was much in the public eye. He was a constant actor on the public stage.

He sought to continue as Mayor. He left his business with his brother James, and was almost a full-time candidate for another public office, County Tax Assessor.

Respondent sought and received much publicity. He kept a scrap book (TT. 3, A. 27). It was *because of all this publicity* that the area editor knew of Respondent, and automatically used his name instead of his brother James.

In Respondent's libel suit he claimed damages for loss of the elections, and for loss of public standing. He cannot disavow his own self-affixed label in his libel suit.

This is the very situation the Federal rule was intended to cover.

In the famous words of our former President:

"If you can't stand the heat, stay out of the kitchen!"

Respondent chose to seek the public spotlight. He made his own choice. Not only did he choose to run but he chose to sue for damages in that public figure capacity.

We respectfully submit the Court should reverse the judgment below and order judgment entered for Petitioners.

HAROLD B. WAHL,
Loftin and Wahl,
414 Florida Title Building,
Jacksonville, Florida 32202,

Attorneys for Petitioners.

June, 1970.